(24)

XI-HC-78

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ....Cr.A.:138..... **सन् 200 /**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

APPELLANT Bodhram, S/o Jakalaram Sahu, Aged about 32 years, Occupation 'Mistri', R/o Village Bargaon, P.S. Hirri, Distt Bilaspur.

Versus

RESPONDENT State of Chhattisgarh

D.B. : Hon'ble Mr. L.C. Bhadoo and Hon'ble Mr. Dhirendra Mishra, JJ.

21-3-2007

Shri Abhay Tiwari, Advocate for the appellant.
Shri D. K. Gwalre, Govt. Advocate, for the respondent/State.

Arguments Heard.

Oral Judgment dictated on dais.

Per L.C.Bhadoo, J

This appeal is directed against the judgment of conviction and order of sentence dated 20.1.2001 passed by 4th Additional Sessions Judge, Bilaspur (C.G.) in Sessions Trial No. 197/2000, whereby the learned Additional Sessions Judge after holding the accused/appellant guilty for commission of offence under Section 302 of the IPC, sentenced him to undergo imprisonment for life and pay a fine of Rs.2000/-, in default of payment of fine to further undergo R.I. for one year.

Case of the prosecution, in brief, is that at about 10.30 a.m. on 3.3.2000 after hearing the cries of Dropadibai, SahodraBai (PW-5), Panchu @ Panchram (PW-9) and other persons arrived at the place of occurrence. At that time Dr. A.R.Banjare (PW-11) posted in the Govt. Hospital was called and he enquired from Dropadibai, on which she

P.T.O.

(25)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A...1.3.8.... **सन् 200 /**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश — 2 —	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

replied that since her husband was doubting her fidelity, on that ground after pouring kerosene on her body he has set her on fire. In the presence of witnesses Daduram (PW-6), Kotwar Shyamdas (PW-8) etc. Dr. A.R. Banjare (PW-11) recorded the dying declaration (Ex.P/9) of Smt. Dropadibai. Dropadibai was sent to Govt. Hospital, Bilaspur where she succumbed to the burn injuries at about 3.30 a.m. Merg intimation (Ex.P/12) was registered at City Kotwali, Bilaspur. Inquest (Ex.P/2) was prepared on the body of Dropadibai. Postmortem on the body of Dropadibai was conducted by Dr. Manoj Jaiswal (PW-16) and Dr.(Smt.) Batham and they prepared the postmortem report (Ex.P/15) in which the body of Dropadibai was found 100% burnt. They opined that cause of death was excessive burn and as a result of shock. The papers were sent to the Police Station Hirri by City Kotwali, Bilaspur, on which merg intimation (Ex.P/13) was reduced into writing. Based on the dying declaration First Information Report (Ex.P/16) was registered. Investigating officer left for the scene of occurrence, took into possession one plastic jerkin containing kerosene under Ex.P/3, burnt clothes of Dropadibai i.e. sari, petticoat, blouse, the matchsticks, plastic necklace etc. were seized under Ex.P/4. He took into possession one tricot shirt of the accused with burnt sleeves under Ex.P/5. Assistant Sub-Inspector T.R. Goutam prepared the site plan (Ex.P/7). Another site plan (Ex.P/14) was prepared by Patwari Halka. The burnt clothes were sent for examination to F.S.L., Sagar from where report (Ex.P/19) was received. The accused was arrested. After completion of investigation charge sheet was filed in the Court of

P.T.O.

(26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A.138..... **सन्** **200 /**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 3	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Judicial Magistrate First Class, Bilaspur who in turn committed the case to the Sessions Judge, Bilaspur from where 4th Additional Sessions Judge, Bilaspur received the case on transfer for trial.

Prosecution in order to establish the charge against the accused/appellant examined 18 witnesses. Statement of the accused was recorded under Section 313 of the Cr.P.C. in which he denied the circumstances appearing against him in the prosecution evidence and stated that he is innocent and has been falsely implicated in the crime.

Learned Additional Sessions Judge after hearing counsel for the respective parties convicted and sentenced the accused as aforementioned.

We have heard Mr. Abhay Tiwari, learned counsel appearing on behalf of the accused/appellant and Mr. D.K.Gwalre, learned Dy. G.A. for the State/respondent.

PW-16 Dr. Manoj Jaiswal has stated on 3.3.2000 he was working in the Govt. Hospital, Bilaspur where he along with Dr. (Smt.) Batham conducted postmortem on the body of Dropadibai and noticed that the body was burnt up to 100%. Therefore, in view of above medical evidence and postmortem report (Ex.P/15), it is established that Dropadibai succumbed to the burn injuries.

As far as involvement of the accused/appellant in setting Dropadibai on fire is concerned, Mr. Abhay Tiwari argued that as per

(27)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A./138.... **सन्** 200/

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 4	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the evidence of Dr. Manoj Jaiswal (PW-16) the body of Dropadibai was 100% burnt and he has stated in his evidence that in such a condition it was not possible for her to put her thumb impression. Therefore, the dying declaration (Ex.P/9) becomes doubtful.

In order to appreciate the argument of learned counsel for the accused/appellant, we have perused the evidence of Dr. A.R. Banjare (PW-11) who has stated that on 3.3.2000 he was working as a doctor in Primary Health Center, Sargaon ~~and~~ at about 11.00 to 11.30 a.m. the village Sarpanch and one Rajeev Tiwari came to him and informed that one lady has burnt, therefore, he went to the house of accused where he saw that Dropadibai was writhing in pain on account of burn injuries sustained by her. He has further stated that Dropadibai was crying that her husband after setting her on fire has run away. Number of persons were standing there. As the condition of Dropadibai was precarious, therefore, on being asked by Sarpanch and other villagers, he recorded the dying declaration of Dropadibai in which she has stated that at about 10.00 to 10.30 in the morning her husband Bodhram Sahu poured kerosene on her body and set her on fire since he was doubting her fidelity. She also stated that even 5-6 days prior to the incident, he quarreled with her. The doctor has stated that at the time of giving this statement, she was fully conscious and the dying declaration was recorded at 11.55 in the morning in the house of accused Bodhram, which bears his signature and Dropadibai put her thumb impression on the same. However, in the cross-examination of this witness, no suggestion was given to him

P.T.O.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..Cr.A./139.... **सन** 200/

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	5	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

as to whether it was possible for Dropadibai to put her thumb impression on any document while she was 100% burnt.

PW-5 Sahodra Bai has stated that she is residing in a separate house, Dropadibai was her sister-in-law, wife of elder brother of her husband. In the morning she was providing food to her children, at that time hearing the commotion she came out in the street and saw that Dropadibai was lying in a cot in the courtyard of her house. She went near the cot and saw that her whole body was burnt, Dropadibai asked her to provide her water, on which she enquired from Dropadibai whereupon Dropadibai disclosed that her husband has set her on fire. She has further stated that her father-in-law namely Jakhlaram was also there and the doctor was called. PW-6 Daduram has also stated that body of Dropadibai was burnt and in his presence Dr. Banjare (PW-11) recorded the dying declaration of Dropadibai, in which she has stated that her husband has set her on fire. The dying declaration (Ex.P/9) was recorded by the doctor, on which he also signed and his signature is from place 'A' to 'A'. Dropadibai was talking and whatever she was talking, was reduced into writing by the doctor. In the cross-examination he has stated that the doctor enquired from Dropadibai as to how she sustained burn injuries, on which Dropadibai disclosed that her husband has set her on fire. He put his signature on dying declaration (Ex.P/9) at the instance of the doctor. It is incorrect to say that the doctor has not recorded the dying declaration of Dropadibai. Dropadibai has put her thumb impression on Ex.P/9. PW-8 Shyamdas, Kotwar of the

(29)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A./139..... **सन् 200 /**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश 6	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

village has stated that Dr. Banjare recorded the dying declaration of Dropadibai in his presence and she disclosed to the doctor that her husband has set her on fire and the dying declaration is Ex.P/9, which was recorded as per the statement given by Dropadibai, which bears his signature from 'B' to 'B' portion. PW-9 Panchram has also corroborated the above evidence. Thus, in view of the above ample evidence that Dropadibai made the dying declaration (Ex.P/9) before Dr. Banjare (PW-11), no question was put to Dr. Banjare whether Dropadibai could put her thumb impression on the above document despite being burnt 100% and also in view of the oral dying declaration made by Dropadibai before PW-5 Sahodra Bai, sister-in-law of Dropadibai and the accused to the effect that accused has set Dropadibai on fire, the dying declaration (Ex.P/9) stands proved.

Mr. Tiwari, also argued that there is nothing on record to show as to how the dying declaration (Ex.P/9) came in the possession of police and placed on the record.

In this connection, PW-18 T.R. Goutam (A.S.I.), P.S. Hirri, in paragraph 9 of his evidence has stated that after giving an application to Dr. Banjare, he obtained the dying declaration from him. Therefore, in view of above evidence and the F.I.R. of Ex.P/16, it is clear that the police took into possession the dying declaration (Ex.P/9) from Dr. Banjare and placed it on record, as such the argument of learned counsel for the accused/appellant in this respect has no substance.

P.T.O.

(30)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक Cr.A./139..... **सन् 200/**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

Mr. Tiwari, further argued that before recording dying declaration (Ex.P/9) Dr. Banjare (PW-11) has not given any certificate to the effect that Dropadibai was in a fit state of mind to give the statement.

Dr. Banjare has categorically stated that Dropadibai was in a fit state of mind to give her statement and she was talking. Even other witnesses namely PW-5 Sahodra Bai, PW-6 Daduram, PW-8 Shyamdas and PW-9 Panchra have also stated in their statements that Dropadibai was in a fit state of mind to give the statement and in fact, she gave the statement, therefore, despite there being ample evidence on record regarding fitness of mind of Dropadibai to give statement, merely in the absence of any medical certificate in this regard, the dying declaration (Ex.P/9) can not be disbelieved.

Mr. Tiwari also argued that admittedly the house where Dropadibai was burnt is situated in the thickly populated area but there is noting on record that she raised crises and people came to her rescue.

This argument of learned counsel for the accused/appellant is contrary to the evidence available on record as PW-5 Sahodra Bai, sister-in-law of Dropadibai and the accused has categorically stated in her evidence that in the morning she was providing food to her children, at that time she heard the cries and came out and saw that Dropadibai was lying on the cot in a burnt condition in her house and other villagers also came on the spot. Therefore, in view of the

P.T.O.

(31)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ...Cr.A./139..... **सन् 200/**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

above evidence, we are of the considered opinion that prosecution has been able to establish the involvement of the accused in setting Dropadibai on fire after pouring kerosene on her body.

Apart from the above evidence, from the evidence of the investigating officer PW-18 T.R. Goutam who has stated that he seized the burnt clothes of Dropadibai, matchsticks, plastic necklace of Dropadibai under Ex.P/4 and on 8.3.2000 he also seized the shirt of the accused under Ex.P/5, on which as per the report (Ex.P/19) of F.S.L. smell of kerosene oil was noticed, which has not been explained by the accused as to how the smell of kerosene was present on his shirt, the involvement of the accused in the crime in question stands established beyond reasonable doubt. Therefore, based on the dying declaration (Ex.P/9) made before Dr. Banjare (PW-11), the oral dying declaration made before Sahodra Bai (PW-5) as also the other circumstantial evidence i.e. seizure of half burnt shirt of the accused from the place of occurrence, for which no explanation has been offered by the accused, the trial Court has rightly convicted the accused/appellant for commission of murder of her wife Dropadibai by setting her on fire.

In the result, the appeal being devoid of substance is liable to be dismissed and is hereby dismissed.

Sd/-
L.C. BHADOO
Judge

Sd/-
DHIRENDRA MISHRA
Judge

P.T.O.